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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition (c) No. 1200 of 2007**

Petitioner : Smt. Abha Patel

Versus

Respondents : State of Chhattisgarh and others

Post for order on 19th March, 2007

Sd/-
Satish K. Agnihotri
Judge

(124)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**
**Writ Petition (c) No. 1200 of 2007**

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| Petitioner | : | Smt. Abha Patel wife of Shri Manohar Lal Patel, aged about 40 years, Sarpanch, Village Panchayat Kaunsara, Janpad Panchayat Bagbahra, District Mahasamund (C.G.). |
| | Versus | |
| Respondents | :1. | State of Chhattisgarh, Through : the Secretary, Department of Panchayat and Social Walfare, D.K.S. Bhawan, Raipur (C.G.). |
| | 2. | The Collector Mahasamund, District Mahasamund (C.G.). |
| | 3. | The Sub Divisional Officer (Revenue) (Prescribed Authority) Mahasamund, District Mahasamund (C.G.). |
| | 4. | The Tahsildar (Presiding Officer), Mahasamund, District Mahasamund (C.G.). |
| | 5. | Shrawan Kumar Dhruv Son of Shri Kneduram Dhruv, Up-Sarpanch, Village Panchayat Kaunsara, Janpad Panchayat Bagbahra, District Mahasamund (C.G.). |
| | 6. | Sukalu Ram Sahu Son of Shri Jahat Ram Sahu, Panch Ward No. 1; |
| | 7. | Nand Kumar Chakradhari Son of Shri Janakram Chakradhari, Panch Ward No. 2; |
| | 8. | Smt. Dhasni Bai Wife of Shri Dashrath Sahu, Panch Ward No. 3; |
| | 9. | Smt. Shailendri Bai Wife of Shri Gendram Thakur, Panch Ward No. 4; |
| | 10. | Ramadhar Sen Son of Shri Dhasiya Sen, Panch Ward No. 5; |
| | 11. | Smt. Shayama Bai Sahu Wife of Shri Kheduram Sahu, Panch Ward No. 8; |
| | 12. | Janakram Dhruv Son of Shri Sukhiram Dhruv, Panch Ward No. 9; |
| | 13. | Ghasiram Dhruv Son of Shri Panchuram Dhruv, Panch Ward No. 10; All are residents of Village Kaunsara, Village Panchayat Kaunsara, Janpad Panchayat Bagbahra, District Mahasamund (C.G.). |

**SB : Hon'ble Shri Satish K. Agnihotri, J.**

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Present: Mr. V.K. Pandey, Advocate for the petitioner.
Mr. Utkarsh Verma, Dy. Govt. Advocate for the respondents No. 1 to 4/State
Mr. Manoj Paranjape, Advocate for the respondents No. 5 to 13/Caveator.

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**ORDER**

**(Passed on this 19th day of March, 2007)**

1. By this petition, filed under Article 226 of the Constitution of India, the petitioner challenges the legality and validity of the order dated 12.2.2007 (P/1), passed by the Collector Mahasamund/respondent No. 2.

2. The indisputable facts, in nutshell, are that the petitioner is the elected Sarpanch of Village Panchayat, Kaunsara, Janpad Panchayat, Bagbahra, District Mahasamund. A meeting was called on 5.7.2006 to consider 'No Confidence Motion' against the petitioner. Out of 13 members of the Panchayat, 9 members were present and cast their votes in the motion by putting a mark as prescribed under Rule 5 of the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 (hereinafter referred to as 'the Niyam, 1994'). 8 members put mark (✓) and 1 member marked as (ς). Accordingly, 1 vote was declared invalid, as it was not in accordance with a mark prescribed under Rule 5 of the Niyam, 1994. Thus, the motion could not be "*carried out*". The Presiding Officer/Tahsildar after holding that to carryout 'No Confidence Motion', 10 members were required and in the proceedings only 8 votes were cast in favour of 'No Confidence Motion'. Thus, 'No Confidence Motion' was declared as not "*carried out*".

3. Being aggrieved, the Up-Sarpanch and 8 other members made a reference to the Collector, Mahasamund under the provisions of the Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993'). The Collector, after having held the ballot paper indicating mark (ς) as valid, allowed the reference and set aside the order passed by the Tahsildar in the

meeting declaring that 'No Confidence Motion' was not "*carried out*" vide order dated 8.8.2006 (P/5).

4. Against the order dated 8.8.2006, passed by the Collector, Mahasamund, the petitioner had filed a writ petition, being Writ Petition No. 4657/2006, before this Court. This Court, vide order dated 11th December, 2006 (P/7), after having noticed that no opportunity of hearing was afforded to the elected Sarpanch, who is the most affected party in the adjudication, set aside the order dated 8.8.2006 and remitted back the matter to the Collector for fresh decision after issuing notice to the petitioner, in accordance with law.

5. The Collector by the order dated 12.2.2007 (P/1) maintained the order dated 8.8.2006 (P/5), passed earlier, without considering the question asto whether the application/reference against the order passed by the Tahsildar declaring that 'No Confidence Motion' has failed, was maintainable.

6. Shri V.K. Pandey, learned counsel appearing for the petitioner would submit that a mark (ς) is not correct mark to consider valid vote in favour of 'No Confidence Motion'. It was further contended that a reference could be made to the Collector if 'No Confidence Motion' has been carried out, not otherwise. It was next contended that 9 members, out of 13 members present, does not constitute a majority of less than three fourth of the panchas present as there should be 9 panchas, who cast their votes in favour of 'No Confidence Motion', treating 1 vote, which does not bear the correct mark as the same mark is not prescribed under the provisions of Rule 5 of the Niyam, 1994 as also valid.

7. Per contra, Mr. Manoj Paranjape, learned counsel appearing for the respondents No. 5 to 13 would contend that the intention has to be looked into since there was no cross mark, but a mark (ς) which is similar to other mark (ر) was rightly treated as valid vote in favour of

'No Confidence Motion'. Learned counsel further contended that out of 13 members, two third constitutes 13 x 2/3 = 8.6 means 9. 9 members were present and three fourth of the total members present i.e. 9 x 3/4= 6.75 means 7. Even if, 1 vote is declared as invalid, but 8 members have cast their votes in favour of 'No Confidence Motion'. Thus, 'No Confidence Motion' could have been held as "*carried out*". He further contended that the dispute with regard to the validity of the motion carried out as prescribed under Section 21 (4) of the Adhiniyam, 1993 was rightly entertained by the Collector as the required votes i.e. two third of the members presence was 7 and in the present case, motion was held as "failed". Thus, the only remedy available was reference of the dispute by the Up-Sarpanch and other members to the Collector.

8. Mr. Utkarsh Verma, learned Deputy Government Advocate appearing for the respondents No. 1 to 4 adopts the submission made by learned counsel appearing for the respondents No. 5 to 13. It was contended that the Collector has no power to entertain the dispute under Section 21 (4) of the Adhiniyam, 1993 in the case where the Presiding Officer, i.e. Tahsildar held that 'No Confidence Motion' has failed.

9. I have heard learned counsel appearing for the parties and have perused the pleadings and documents appended thereto. It is admitted fact that there were 13 members constituting the village Panchayat, Kaunsara and out of 13 members, the requirement under Section 21 (1) of the Adhiniyam, 1993 is presence of two third of the total numbers of panchas constituting the Gram Panchayat. Two third of the total numbers would be 13 x 2/3 = 8.6 means 9. 9 members were present. Thus, the corom was complete for consideration of 'No Confidence Motion'. The second requirement is to carryout 'No Confidence Motion' by three fourth of the panchas present and voting, if the resolution is passed by a majority of not less than three fourth of

present panchas and voting, the motion is held as "*carried out*". In the present case, three fourth of 9 members present means 9 x 3/4 = 6.75 means 7. 8 members have cast their votes by putting mark (✓) and 1 vote, which has put mark, but not cross as required under Rule 5 of the Niyam, 1994, even if the same is ignored, 'No Confidence Motion' has been "*carried out*" as more than 7 members have cast their votes in favour of 'No Confidence Motion'. Thus, the finding of the Presiding Officer in the meeting held on 5.7.2006 that 'No Confidence Motion' failed is not correct.

10. It is beneficial to quote Section 21 (1) and Section 21 (4) of the Adhiniyam, 1993.

> "21. No-confidence motion against Sarpanch and Up-Sarpanch.- (1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith.
> Section 21 [1][(4) If the Sarpanch or the Upsarpanch, as the case may be, desires to challenge the validity of the motion carried out under sub-section (1), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him, and his decision shall be final.]"

11. On bare reading of the provisions of Section 21 (1) of the Adhiniyam, 1993 it is held that 'No Confidence Motion' was carried out even if 1 vote bearing the disputed mark is declared as invalid. The motion has been "*carried out*" by a clear majority. I do not consider it necessary to go into the validity of the mark (✓). The Second question asto whether the Collector has jurisdiction under Section 21 (4) of the Adhiniyam, 1993 is not necessary to be examined in the facts of the

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present case. Thus, I am not inclined to examine the said question in this case.

12. This Court in the case of **Ghanshyam Yadav vs. Rameshwar Sahu & others** (W.P. No. 6774 of 2006), decided on 5.12.2006, held that no prejudice, whatsoever is caused in any manner when the resolution was passed by overwhelming majority. Thus, 'No Confidence Motion' cannot be declared as null and void. In the present case, the position is the same as out of 9 members i.e. two third of the members constituting Panchayat, were present and cast their votes. 8 votes more than three fourth of the present members present and cast their votes in favour of 'No Confidence Motion". Thus, 'No Confidence Motion' was "*carried out*". There is no other ground raised in regard to the conduct of the proceedings.

13. As a result and for the reasons aforestated, the order 12.2.2007 (P/1) passed by the Collector, Mahasamund/respondent No. 2 is upheld and the order passed by the Presiding Officer i.e. Tahsildar declaring 'No Confidence Motion' failed is set aside, holding that 'No Confidence Motion' was "*carried out*".

14. Accordingly, the writ petition is dismissed. No order as to costs.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

B/-